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APPLICATION NO.	FILING DATE	FIRST NAME	ENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,585	11/27/2001	Douglas Levinson		10436-0015-999	7294

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EXAMINER

EPPERSON, JON D

ART UNIT

PAPER NUMBER

1639

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/994,585

Applicant(s)

LEVINSON, DOUGLAS

Examiner

Jon D. Epperson

Art Unit

1639

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Please see attached sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 81-131, 142 and 150.
Claim(s) withdrawn from consideration: 1, 15, 51, 66, 132-141 and 143-149.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: Please see attached sheet.

Art Unit: 1639

The After-Final amendment is denied entry for the following reasons:

1. Claim 81 (currently amended) inserts the new claim limitation “a disease-causing substance comprising calcium oxalate in liquid or dissolved form and one or more additional components” (e.g., see newly amended claim 81), which introduces new search and consideration. Specifically, Applicants’ newly amended claim reads on a new “subgenus” of arrays that was NOT previously elected as purported by Applicants (e.g., see 7/5/05 Response, paragraph 1, “Applicants respectfully submits that the amended claims should not require a new search or consideration of new issues as claim 81 has been amended to read on the elected species of calcium oxalate”). However, Applicants’ election of species of array was not drawn to a broad genus of calcium oxalate as purported. Applicants’ elected species was drawn to a narrow set of arrays that contain calcium oxalate in a “liquid” form, not a “liquid or dissolved form” as currently amended (e.g., see 6/2/03 Response to Restriction Requirement, page 2, “For Species 1, Applicants’ elects: A. Liquid sample of calcium oxalate”; see also Paper No. 4, page 5 and original claim 3 wherein Applicants’ were required to elected from the “solid, liquid or dissolved form” of the disease causing substance). In addition, Applicants’ elected species of array contains ONLY calcium oxalate as the disease causing substance and ONLY a salt as the additional component (e.g., see Paper No. 4, Species 1 Requirement; see also 6/2/03 Response, page 2, elections C and D for species 1), which the currently amended claim is not limited to (e.g., see newly amended claim 81, “a disease-causing substance comprising calcium oxalate in liquid or dissolved form and one or more additional components”). Thus, Applicants’ newly claimed subgenus would require additional search and consideration. Furthermore, the